IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1313 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRAHLADBHAI NATHALAL PATEL & 9 - Appellant(s)
Versus
KANTILAL RAMBHAI PATEL - Defendant(s)

==========

Appearance :
MR MI PATEL for Appellant(s) : 1,None for Appellant(s) : None for Petitioner No(s).: for Appellant(s) : 2 - 10.
MS VASUBEN P SHAH for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/07/2006

ORAL JUDGMENT

Present appeal has been filed by the appellants – original plaintiff Nos.1 to 9 (hereinafter referred to as “the plaintiffs”) and original defendant No.2 challenging the judgment and decree passed by the learned City Civil

Court at Ahmedabad dated 22-3-1982 passed in Civil Suit No.2821 of 1980 in holding that the suit firm was dissolved with effect from 4th March, 1980 and further holding that the accounts of the partnership has been made up.

2. The plaintiffs filed the aforesaid civil suit in the learned City Civil Court at Ahmedabad for dissolution of the partnership firm in the name and style of Shri Mataji Corporation and for taking accounts of the income and expenditure of that firm. The said suit was filed by five partners out of seven partners of that firm. Defendant No.2 was siding with the plaintiffs. Thus, all the five plaintiffs and defendant No.2 prayed for a decree or rendition of accounts against defendant No.1.

3. It was averred in the plaint that the suit was constituted only for purchase of the rights and interest in the land bearing survey No.71 situated at Ghatlodia and for development thereof, if possible, more particularly for housing society and sale thereof. As per the plaintiffs after the sale of the land and settlement of the accounts of the business of the firm, the firm has to be dissolved as per the terms of the partnership deed.

It was also further alleged that defendant No.1 was the Engineer-cum-Building Contractor and an Organizer having experience in the line of purchase and sale of the land and therefore; it was the defendant No.1 who manage the affairs of the firm and it was he who maintained the accounts of the business of the firm and he got the accounts written by one Jethalal Ishwardas, an accountant. It was further averred in the plaint that after the purchase and sale of the aforesaid land, defendant No.1 submitted before them copies of the balance sheets and according to the plaintiffs, the copies of these two balance sheets were written by Jethalal, the accountant. It was also further averred that on going through those copies, they found several corrections in figures and therefore, they raised objection before defendant No.1 in that respect and asked his explanation for the same. It was also alleged that defendant No.1 had posted false entries in the account books and had taken away sizable amount. However, defendant No.1 refused to hear them. On such an attitude being displayed by defendant No.1, plaintiff No.1 was asked to see if a compromise was possible. However, defendant No.1 did not pay any heed to his request and therefore, a suit notice was issued and defendant No.1

refused to accept the said notice which was for enforcement of arbitration clause containing in the partnership deed for the settlement of the accounts/disputes. It was further alleged that though defendant No.1 was called upon for appointing an arbitrator for resolution of the disputes amongst the parties, defendant No.1 failed to comply with the demand and therefore, the plaintiffs filed the suit for aforesaid relief.

4. The suit was resisted by defendant No.1 by filing written statement at Exh-11. It was denied by him that the suit firm was managed by him. He also denied the allegation that it was he, who maintained and got written the account of the firm. According to him, plaintiff Nos.1 to 5 managed the affairs of the suit firm and accounts thereof. It was also further submitted that as such the accounts were already settled and the respective partners were given their shares and therefore, it was requested to dismiss the suit. The learned trial Court raised the issues at Exh-21. The main issue, which was raised by the learned trial Court, was who was managing the affairs of the suit firm and who was liable to render the accounts. On appreciation of evidence, the learned

trial Court held that defendant No.1 was from the very beginning, a partner in the suit firm. The learned trial Court also held that it was not defendant No.1 alone to manage the affairs of the firm. Ultimately, the learned trial Court passed a decree and ordered that the suit firm in the name of Shri Mataji Corporation is deemed to have been dissolved with effect from 4th March, 1980 i.e. the date next after the date on which the final sale deeds were executed in favour of Anupam Trading Corporation. On appreciation of evidence, the learned trial Court further held that accounts were already settled between the parties and the payments as per the settled accounts, were also made and therefore, so far as account is concerned, no further order was required to be passed. Being aggrieved and dissatisfied with the same, the plaintiffs have preferred the present appeal.

5. Shri Jayesh Patel, learned advocate appearing on behalf of the plaintiffs has vehemently submitted that the learned trial Court has materially erred in holding that the suit firm is dissolved with effect from 4th March, 1980 and that the accounts of the partnership was already made up.

6. On appreciation of evidence, the learned trial Court held that the bank accounts were operated by plaintiff No.5. So far as writing the accounts by Jethalal, account writer and allegation that the accounts were being written on advice of defendant No.1, it is worthwhile to consider the correspondence and reply to the notice. He has stated that he was writing the accounts not under the instruction and supervision of defendant No.1 but was writing the same under the instruction and supervision of plaintiff Nos.1 to 5 at their residence at Nathalal Colony. It is worthwhile to note that none of the parties examined Jethalal as a witness. It has also come on evidence that the respective partners were given the cheques of different odd amount figures. This shows that the accounts were already settled and the payments were made as per the settlement of the accounts reflected in the copy of the balance sheet Exh-132. If the statement on behalf of the plaintiffs and defendant No.2 that the accounts had not been settled to be considered then in that case, the plaintiffs and defendant No.2 would have refused to take odd sum alleged offered to them by defendant No.1. It appears from the record that the partners accepted these odd sums without any objection and that itself shows that they had agreed to the figure

as reflected in the balance sheet. On appreciation of evidence and the partnership deed, the learned trial Court has rightly passed a decree by holding that the suit firm in the name of Shri Mataji Corporation, is deemed to have been dissolved with effect from 4th March, 1980 i.e. the date next after the date on which the final sale deeds were executed in favour of Anupam Trading Corporation. Considering the situation as stated above, the learned trial Court has also rightly held that the accounts have already been settled between the parties and the payments as per the settled accounts have been made and therefore no accounts now remain to be taken. The learned trial Court has not committed any error in appreciating the evidence.

7. For the reasons as stated above, the appeal fails and is accordingly dismissed. No costs. Ad interim relief if any granted earlier stands vacated forthwith.

(M.R.SHAH,J.)

shekhar/-